



Resolution

Authorizing Developers Agreement with Harbor Retirement Development, LLC

WHEREAS, Harbor Retirement Development, LLC (“Harbor”) is the contract purchaser of approximately 25.98 acres of land located along U.S. Route 1 in the Township of South Brunswick known as Block 98, Lot 3.06 on the South Brunswick Township Tax Maps; and

WHEREAS, the property was the subject of a development application before the Township Zoning Board which granted use variance, preliminary and final major site plan approval and related variance relief in order to permit the construction of a 120,000 s.f. assisted living and memory care facility; and

WHEREAS, the facility will dedicate at least 10% of the total beds to Medicaid eligible patients and further comply with all of the requirements of N.J.A.C. 5:97-6.11, which governs affordable housing production by way of Assisted Living facilities, and as such is considered an inclusionary development that produces affordable housing credits for the Township; and

WHEREAS, the project requires a Treatment Works Approval (“TWA”) to extend sewer service to the property; and

WHEREAS, on February 26, 2018, Stony Brook Regional Sewer Authority approved the TWA for the construction of approximately 1,635 linear feet of eight-inch diameter sanitary sewer and associated manholes for the assisted living facility; and

WHEREAS, the Township evaluated the capacity and flow of the Township’s sanitary sewer system that would service the project and identified, among other things, problems with infiltration and inflow (“I & I”) in the sewer line that Harbor intends to utilize; and

WHEREAS, in order to confirm and create capacity within the line, Harbor has agreed to undertake or pay for I & I mitigation, corresponding to its anticipated flow through the repair/replacement of three manholes at an estimated cost of \$10,000 each, which will provide meaningful mitigation and excess capacity based upon Harbor’s expected flow; and

WHEREAS, the Township and Harbor wish to enter into a Developer’s Agreement to memorialize the agreement reached to address surface and ground water leakage and to assure sufficient capacity within the sewer line to be used by Harbor;

NOW THEREFORE BE IT RESOLVED on this 24th day of July, 2018, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

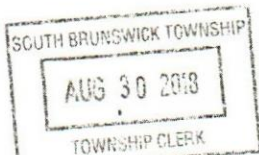
1. The Mayor and Township Clerk shall be and are hereby authorized to execute the agreement entitled Harbor Retirement Development, LLC, Developer’s Agreement.

2. A copy of the agreement shall remain on file in the office of the Township Clerk.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Camarota, Councilman
SECONDER:	Josephine "Jo" Hochman, Councilwoman
AYES:	Bierman, Camarota, Grover, Hochman, Carley

This is to certify that the foregoing is a true copy of a resolution adopted at the South Brunswick Township Council meeting held on July 24, 2018.


Barbara Nyitrai, Township Clerk



MIDDLESEX
COUNTY • N J

Elaine M. Flynn
Middlesex County Clerk
Recording Data Cover Page
Pursuant to N.J.S.A. 46:26A-5

INSTR # 2018073584
0 BK 17273 PG 532 Pgs 532 - 540; (9 pgs)
RECORDED 08/21/2018 08:47:04 AM
ELAINE M. FLYNN, COUNTY CLERK 80
MIDDLESEX COUNTY, NEW JERSEY
RECORDING FEES: \$11.00

Official Use Only

Date of Document August 13, 2018	Type of Document <i>Deed</i>
First Party Name Township of South Brunswick	Second Party Name Harbor Retirement Development LLC
Additional First Parties	Additional Second Parties

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY.

Block 98	Lot 3.06
Municipality South Brunswick	Consideration 0
Mailing Address of Grantee Donald J. Sears, Esq. Township of South Brunswick P.O. Box 190 Monmouth Junction, NJ 08852	

THE FOLLOWING SECTION IS FOR ORIGINAL MORTGAGE BOOKING & PAGING INFORMATION FOR ASSIGNMENTS, RELEASES, DISCHARGES & OTHER ORIGINAL MORTGAGE AGREEMENTS ONLY.

Original Book	Original Page
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MIDDLESEX COUNTY, NEW JERSEY RECORDING DATA PAGE.

This cover page is for use in Middlesex County, New Jersey only.

Please do not detach this page from the original document as it contains important recording information and is part of the permanent record.

C. Law



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HARBOR RETIREMENT DEVELOPMENT, LLC
DEVELOPER'S AGREEMENT

THIS AGREEMENT made this 13TH day of August, 2018, by and between the **TOWNSHIP OF SOUTH BRUNSWICK**, (hereinafter "Township"), a municipal corporation of the State of New Jersey, having its offices at 540 Ridge Road, P.O. Box 190, Monmouth Junction, NJ 08852, and **HARBOR RETIREMENT DEVELOPMENT, LLC**, (hereinafter "Developer" or "Harbor"), having an address at 958 20th Pl., Second Floor, Vero Beach, FL 32960.

WITNESSETH:

WHEREAS, Developer is the contract purchaser of certain lands located along U.S. Route 1 in the Township of South Brunswick, County of Middlesex, State of New Jersey, known as Block 98, Lot 3.06 on the South Brunswick Township Tax Maps ("Property"). The Property is approximately 25.98 acres and falls within the OR and R-1 Zones; and

WHEREAS, the Property was the subject of a development application before the Township Zoning Board which granted use variance, preliminary and final major site plan approval and related variance relief in order to permit the construction of a 120,000 s.f. assisted living and memory care facility ("Project"); and

WHEREAS, the Project will dedicate at least 10% of the total beds to Medicaid eligible patients and further comply with all of the requirements of N.J.A.C. 5:97-6.11, which governs affordable housing production by way of Assisted Living facilities, and as such is considered an inclusionary development so that no payment of a Non-Residential Development Fee pursuant to N.J.S.A. 40:55D-8.1, et seq., is required; and

WHEREAS, the Project requires a Treatment Works Approval ("TWA") to extend sewer service to the Property; and

WHEREAS, on February 26, 2018, Stony Brook Regional Sewer Authority approved the TWA for the construction of approximately 1,635 linear feet of eight-inch diameter sanitary sewer and associated manholes for the assisted living facility. The capacity calculation was determined to be 100 gallons per day per bed for a total of 16,000 gpd; and

WHEREAS, the Township is evaluating the capacity and flow of the Township's sanitary sewer system and has recently released a study prepared by Richard A. Alaimo Associates which has identified, among other things, problems with infiltration and inflow ("I & I") in the sewer line that Harbor intends to utilize; and

WHEREAS, in order to confirm and create capacity within the line, Harbor has agreed to undertake or pay for I & I mitigation, corresponding to its anticipated flow; and

WHEREAS, the parties hereto agree that the repair/replacement of three manholes at an estimated cost of \$10,000 each would provide meaningful mitigation and excess capacity based upon Harbor's expected flow; and

WHEREAS, the Township and Harbor voluntarily enter this Agreement to address surface and ground water leakage and to assure sufficient capacity within the sewer line to be used by Harbor.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the legal sufficiency of which is hereby acknowledged, the Township and Harbor hereby agree as follows:

1. **Incorporation of Preambles.** The preambles to this Agreement are incorporated herein by reference and made a part hereof.

2. **Infiltration and Inflow Fee.** Concurrent with its application to the Township for a building permit related to the Project, Harbor is to submit payment in the amount of Thirty Thousand Dollars (\$30,000.00) to the Township of South Brunswick, in satisfaction of its I&I mitigation obligation/commitment.

3. **TWA.** Based upon Harbor's commitment to pay for mitigation corresponding to its anticipated use, the South Brunswick Sewer Department will cause to be signed the TWA application so that the TWA may be processed and immediately submitted to the NJDEP. The Township will also provide the resolution authorizing signature so it may be submitted with the TWA as required by NJDEP. The Township is willing to do so prior to the completion of the actual I&I mitigation work in part because of the benefit to the Township of the dedication of at least 10% of the total beds to Medicaid eligible patients and Harbor's compliance with all of the requirements of N.J.A.C. 5:97-6.11, which will result in affordable housing credits for the Township.

4. **Voluntary Agreement.** The parties have voluntarily entered into this Agreement for their mutual benefit, having first consulted with and received the advice of their respective legal counsel. It is recognized by the parties that the total value of the I&I mitigation set forth above does not exceed the Developer's pro-rata share of the cost of such improvements, and that the Developer shall not be entitled to reimbursement of any such costs.

5. **Developer Bound by Record.** The Developer agrees to be bound by the testimony, representations, commitments, matters of fact and matters of law which constitute the file and record of the Board in this matter, that it will faithfully discharge all of the obligations and

commitments thereof and that nothing contained herein relieves it of any such obligations and commitments or from any conditions of the Board's approval.

6. **Binding Effect of Agreement and Resolution.** The terms and conditions of this Agreement shall be binding upon the parties hereto and their respective transferees, successors and assigns.

7. **Notices.** All notices, approvals, consents and communications hereunder shall be sufficiently given in writing and delivered by hand or sent by registered or certified mail, postage prepaid, or by Federal Express or other nationally recognized courier service which provides written confirmation of delivery to the sender, addressed to such party at its address first hereinabove set forth and if to Harbor, then also to Christopher DeGrezia, Drinker Biddle & Reath, 105 College Road East, Suite 300, P.O. Box 627, Princeton, New Jersey 08542-0627. Any party may, by notice as aforesaid, change its address for all subsequent notices. Notices given in compliance with the foregoing provisions shall be deemed given on the date of receipt.

8. **Non-Waiver.** The failure of either party hereto to seek redress of violation, to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof, and each party hereto shall have all remedies provided herein with respect to any subsequent act which would have originally constituted a violation.

9. **Governing Laws.** The Agreement is made pursuant to and shall be deemed by and construed in accordance with, the laws of the State of New Jersey.

10. **Modifications.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and it may not be changed or modified orally, but only by a duly authorized written instrument signed by the parties hereto.

11. **Cooperation.** (a) In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree, to the extent permitted by law, to fully cooperate in defending said action to uphold the validity and enforceability of this Agreement.

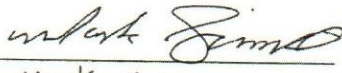
(b) If any term or provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, all other provisions hereof shall nevertheless remain in full force and effect.

12. **Further Assurances.** Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to any other party the full and complete enjoyment of its rights and privileges hereunder.

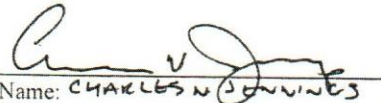
[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have duly executed this Developers Agreement as of the day and year first above written.

WITNESS:



MARK SCIMECA


HARBOR RETIREMENT
DEVELOPMENT, LLC


Name: CHARLES N. SCIMECA
Title: SECRETARY / VICE PRESIDENT
Date: 8/13/18

ATTEST:

TOWNSHIP OF SOUTH BRUNSWICK


By: Barbara Nyitrai, Clerk


By: Charles Carley, Mayor

Dated: 7/25/2018

STATE OF FLORIDA;

SS
COUNTY OF INDIAN RIVER;

I CERTIFY that on August 13, 2018, Mark Scimrca personally came before me and he/~~she~~ acknowledged under oath, to my satisfaction, that:

(a) he/~~she~~ is the General Counsel & CEO of Harbor Retirement Development, LLC, the Limited Liability Company named in this document;

(b) he/~~she~~ is the attesting witness to the signing of this document by Charles N. Jennings, who is the Secretary & Vice President of the Company;

(c) this document was signed and delivered by the Company as its voluntary act duly authorized by a proper resolution;

(d) he/~~she~~ knows the proper seal of the Company, which was affixed to this document; and

(e) he/~~she~~ signed this proof to attest to the truth of these facts.

(f) he is personally known to me.

Signed and sworn to before me
On August 13, 2018

[Signature]
Notary Public,
State of Florida at Large

[Signature]



STATE OF NEW JERSEY:

SS

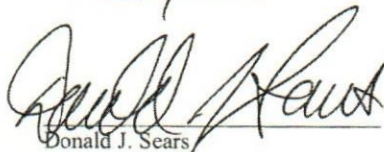
COUNTY OF MIDDLESEX:


I CERTIFY that on July 25, 2018, BARBARA NYITRAI personally came before me and she acknowledged under oath, to my satisfaction, that:

- (a) she is the Township Clerk of the Township of South Brunswick, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by Charles Carley, who is the Mayor of the Township of South Brunswick;
- (c) this document was signed and delivered by the Township of South Brunswick as its voluntary act duly authorized by a proper resolution of the Township Council;
- (d) she knows the proper seal of the Township of South Brunswick which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me

On July 25, 2018


Donald J. Sears
An Attorney at Law
In the State of New Jersey


Barbara Nyitrai, Township Clerk



33. THIRD ROUND: RPM



Resolution

Authorizing a Development Agreement with RPM Development, LLC, for a Mixed Income Affordable Housing Project

WHEREAS, N.J.A.C. 5:93-5.1, et seq., permits a municipality to provide very-low, low and moderate-income housing through municipally-sponsored construction; and

WHEREAS, RPM Development, LLC, (RPM) is an experienced developer of affordable housing that currently owns, operates and maintains numerous existing mixed-income and/or 100% affordable housing developments throughout the State of New Jersey; and

WHEREAS, the Township and RPM wish to enter into an agreement for RPM to develop, construct, administer and manage up to 116 units of rental housing as part of a mixed income housing project wherein at least 55% of which (63 units) shall be set aside for affordable housing, for and on behalf of the Township in satisfaction of a portion of the Township's obligation to provide very-low, low and moderate-income housing;

NOW, THEREFORE, BE IT RESOLVED, on this 26th day of February, 2019, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

1. The Mayor and Township Clerk shall be and are hereby authorized to execute an agreement between RPM Development, LLC, and the Township of South Brunswick for RPM to develop, construct, administer and manage up to 116 units of rental housing as part of a mixed income housing project wherein at least 55% of which (63 units) shall be set aside for affordable housing, for and on behalf of the Township in satisfaction of a portion of the Township's obligation to provide very-low, low and moderate-income housing.
2. A copy of the agreement shall remain on file with the Township Clerk.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Joseph Camarota, Deputy Mayor
SECONDER:	Josephine "Jo" Hochman, Councilwoman
AYES:	Bierman, Camarota, Grover, Hochman, Carley

This is to certify that the foregoing is a true copy of a resolution adopted at the South Brunswick Township Council meeting held on February 26, 2019.



Barbara Nyitrai, Township Clerk

**AGREEMENT BETWEEN RPM DEVELOPMENT, LLC AND TOWNSHIP OF SOUTH
BRUNSWICK FOR DEVELOPMENT AND MANAGEMENT OF A MIXED INCOME
AFFORDABLE HOUSING PROJECT**

This Agreement made this 4 day of March, 2019 between **RPM Development, LLC**, a New Jersey limited liability company having its principal office at 77 Park Street, Montclair, NJ 07042 (hereinafter designated as "RPM") and the **Township of South Brunswick**, a municipal corporation of the State of New Jersey, having its principal office at 540 Ridge Road, Monmouth Junction, NJ 08852 (hereinafter designated as the "Township").

WITNESSETH:

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

Authority

1. This Agreement is made pursuant to the authority contained in the New Jersey Fair Housing Act ("FHA") at N.J.S.A. 52:27D-311 and the rules of the Council on Affordable Housing ("COAH") at N.J.A.C. 5:93-5, et seq. (or its successor regulation), which permit a municipality to provide very-low, low and moderate-income housing through municipally-sponsored construction, as well as pursuant to the requirements of the Uniform Housing Affordability Controls at NJAC 5:80-26.1, et seq. ("UHAC").
2. RPM is an experienced developer of affordable housing that currently owns, operates and maintains several existing mixed-income and/or 100% affordable developments throughout the State of New Jersey.
3. This agreement recognizes the statutory requirement for the provision of very-low income housing pursuant to the provisions of N.J.S.A. 52:27D-329.1, and RPM

agrees to address such statutory requirement instead of the UHAC provision such that 13% of all affordable housing units shall be affordable to households at 30% of the regional median income instead of the UHAC requirements of ten percent of affordable units affordable at 35% of the region's median income.

4. RPM recognizes that the Township has an obligation to provide very-low, low and moderate-income housing opportunities within South Brunswick Township and that the Township has chosen to satisfy that obligation, in part, by entering into the within Agreement with RPM.

Property

5. The land upon which the Project, as defined herein, shall be developed is owned by PROVIDENCE CORPORATION, a New Jersey corporation having an address at 80 Mapleton Road, Princeton, NJ 08540 ("Providence"), TRADITIONAL DEVELOPERS, LLC, a New Jersey limited liability company having an address at 227 Route 333, Bldg. 2 Unit 7, Manalapan, New Jersey 07726 ("Traditional") and HEMINGWAY GROUP, LLC, a New Jersey limited liability company having an address at 14 Hemingway Court, Morganville, New Jersey 07751 ("Hemingway"), (collectively "Owner") which is known and designated as Block 90.03, Lot No. 12.011, as appears on the South Brunswick Tax Map, consisting of approximately 9.963± acres, more commonly known as 211 Henderson Road, Kendall Park, NJ 08824 (hereinafter designated as the "Property").
6. RPM represents that it has or will acquire from the Owner of the Property all necessary right, title and/or interest in the Property to allow it to develop the Project as described herein. Evidence of a written contract between RPM and the

Owner for the conveyance of such right, title and interest must be provided to the Township within thirty (30) days of the full execution of this Agreement.

Obligations of RPM

7. RPM agrees that, subject to municipal site plan and subdivision approval, it shall:
- i. A) develop, construct, administer and manage up to 116 units of rental housing, open to the general public and not age restricted, for and on behalf of the Township in satisfaction of a portion of the Township's obligation to provide very-low, low and moderate-income housing (hereinafter designated as the "Project"). It is anticipated that the total of up to 116 rental housing units will be developed as a Mixed Income project wherein 55% are affordable units and 45% are market rate units in the following configuration:

Bedroom Type	Number of Units
Affordable:	
1	12
2	38
3	13
Subtotal	63
Market:	
1	29
2	24
Subtotal	53
Total	116

- B) provide within the Project the combination of 1, 2 and 3 bedroom units in the above configurations. Except in cases in which the scoring of a project for the award of Low Income Housing Tax Credits ("LIHTC") by the New Jersey Housing and Mortgage Finance Agency will be improved by altering the

above bedroom configurations, any change in the bedroom distribution set forth above must be approved by the Township. In no event shall the bedroom configuration of the affordable housing units violate the following:

- no more than 20% - 1 bedroom units
- at least 30% - 2 bedroom units
- at least 20% - 3 bedroom units

C) establish a schedule for distribution of the units developed in the Project among very low income, low income and moderate income applicants sufficient to permit the Township to receive the maximum credit toward its affordable housing obligations for the Project and to maximize scoring of the Project for purposes of the award of LIHTC. It is required that 13% of the affordable units developed in the Project shall be reserved as very-low income units (defined as units available for households at or below 30% of the median income for Region 3) and at least 37% of the units developed in the Project shall be reserved as low income units (defined as units available for households at or below 50% of the median income for Region 3). The remaining balance of units may be moderate income units (defined as units available for households at or below 80% of the median income for Region 3) with moderate-income rents set no higher than 60% of median income per N.J.A.C. 5:80-26.3(d), et seq.

8. RPM shall apply for, reasonably prosecute and obtain subdivision and/or site plan approval, including any variance relief that may be required, for the Project from the South Brunswick Township Planning or Zoning Board within twelve (12) months of the date of this Agreement, which may be extended for an additional period upon written agreement between the parties.